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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,175	01/23/2004	Purva R. Rajkotia	2003.09.005.WS0	7867
23990	7590	05/17/2007		
DOCKET CLERK P.O. DRAWER 800889 DALLAS, TX 75380			EXAMINER FIGUEROA, MARISOL	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 05/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action. Before the Filing of an Appeal Brief	Application No. 10/764,175	Applicant(s) RAJKOTIA, PURVA R.	
	Examiner Marisol Figueroa	Art Unit 2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-19, 21-25 and 27-30.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed 4/9/2007 have been fully considered but they are not persuasive.

With respect to claim 1, in summary the Applicant argues "that claim 1 requires a transmit power controller capable of adjusting a power level of null frames transmitted by said base station during said call set-up procedure, and Kim does discuss power control on a forward channel, but nothing in Kim discussed any capability to do so during the call set-up procedure, as claimed, because Kim's system requires that the call already be established before any power control takes place" (see pages 13 -14 of Applicant's remarks).

In response, the Examiner respectfully disagrees. As stated in the previous office action (mail date 2/9/2007), the Applicant's admission of the prior art teaches that it is well known in the art the transmission of null frames by the base station during a call set up procedure, but Applicant's admission of the prior art does not particularly teach the adjusting of the power level of the null frames. Kim was introduced only for the teaching of adjusting the power level of frames transmitted from the base station to a mobile station. Thus, Kim in combination with the teachings of the Applicant's admission of the prior art, would produce the adjusting of the power level of null frames during a call set-up procedure, as claimed.

Furthermore, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.

Therefore, Kim may not explicitly teach that the adjusting of the frames transmitted by the base station takes place during a call set-up procedure, however the citations of Kim clearly shows evidence that the base station is "capable of" performing those functions.

With respect to claims 4, 5, 10, 11, 16, and 17, the Applicant notices that the Examiner did not include any reference to APA (i.e., applicant's admitted prior art) in this statement of rejection, and the rejection is only over Kim and Brooks.

However, the Examiner disagrees. Claims 4, 5, 10, 11, 16, and 17 depends on claims which were rejected over Applicant's Admitted Prior Art in view of Kim, therefore, although the APA was omitted from the statement of the rejection of these claims, the claims are rejected over Applicant's Admitted Prior Art in view of KIM and Brooks.

With respect to claims 19-21 and 25-27, the Applicant argues that claims 19 and 25, require that the power level of preamble frames transmitted by the mobile station is increased in response to the detection of at least one missing null frame from the base station, and none of the cited references, alone or in combination, teaches or suggests this feature, because Raaf does teach in paragraph 0037 that power can be increased when there is "no reception of an acknowledgement message", it does not teach or suggest that this can be or should be done in response to the detection of at least one missing frame from the base station. Nothing in Raaf teaches or suggests that a null frame can or should be used as the described "acknowledgement message".

However, the Examiner respectfully disagrees. The "acknowledgement message" is transmitted by the base station and simultaneously or in response to receiving the preamble frames from the mobile station, as with the null frames, therefore, it can be fairly characterized as a null frame.

Furthermore, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.

Therefore, the citations of Raaf (paragraph [0040]-[0041]) clearly shows evidence that the mobile station is "capable of" performing the features of detecting at least one missing null frame and increasing the power of the preamble frames in response to the missing null frames.


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